

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

-----x-----

|                            |   |                             |
|----------------------------|---|-----------------------------|
| In re Application of:      | : | Examiner: Nicholas Kiswanto |
|                            | : |                             |
| Thilo LEINEWEBER et al.    | : |                             |
|                            | : |                             |
| For: METHOD AND DEVICE FOR | : |                             |
| CONTROLLING THE SPEED      | : |                             |
| OF A MOTOR VEHICLE         | : |                             |
|                            | : | Art Unit: 3664              |
| Filed: March 9, 2004       | : |                             |
|                            | : |                             |
| Serial No.: 10/797,680     | : |                             |

-----x-----

Mail Stop Appeal Brief - Patents  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office via the Office electronic filing system on June 30, 2009.

Signature: /Wendy Espinal/  
 Wendy Espinal

**APPEAL BRIEF TRANSMITTAL**

SIR:

Transmitted herewith for filing in the above-identified patent application, please find an Appeal Brief pursuant to 37 C.F.R. § 41.37. A two-month period to respond to the Notice of Appeal filed May 1, 2009 expires on July 1, 2009.

The **\$540** Appeal Brief fee is being **paid by credit card**.

The Commissioner is also authorized to charge payment of any additional fees or to credit any overpayment to Deposit Account No. **11-0600** of Kenyon & Kenyon LLP.

Respectfully submitted,

Dated: June 30, 2009

By: /Michelle M. Carniaux/  
 Michelle M. Carniaux, Reg. No. 36,098 for  
 Gerard A. Messina (Reg. No. 35,952)

KENYON & KENYON LLP  
 One Broadway  
 New York, New York 10004  
 (212) 425-7200  
**CUSTOMER NO. 26646**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellant : Thilo LEINEWEBER et al.  
Serial No. : 10/797,680  
Filing Date : March 9, 2004  
For : METHOD AND DEVICE FOR CONTROLLING THE SPEED OF A MOTOR VEHICLE  
Group Art Unit : 3664  
Examiner : Nicholas Kiswanto  
Confirmation No. : 4908

Address to:  
Mail Stop Appeal Brief - Patents  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office via the Office electronic filing system on June 30, 2009.

Signature: Wendy Espinal  
Wendy Espinal

**APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37**

Sir:

On May 1, 2009, Appellants submitted a Notice of Appeal from the final rejection of claims 1, 2, and 5 contained in the Final Office Action issued by the U.S. Patent and Trademark Office (the “PTO”) on February 2, 2009 in the above-identified patent application. In accordance with 37 C.F.R. § 41.37, this brief is submitted in support of the appeal of the final rejection of claims 1, 2, and 5. For at least the reasons set forth below, the final rejection of claims 1, 2, and 5 should be reversed.

**1. REAL PARTY IN INTEREST**

The real party in interest in the present appeal is:

Robert Bosch GmbH  
Postfach 30 02 20  
D-70442 Stuttgart  
Federal Republic of Germany

Robert Bosch GmbH is the assignee of the entire right, title, and interest in the present application.

**2. RELATED APPEALS AND INTERFERENCES**

There are no interferences or other appeals related to the present application.

**3. STATUS OF CLAIMS**

Claims 1, 2, and 5 are currently pending and stand finally rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,434,471 to Asada et al. (hereinafter Asada et al.).

Claims 3 and 4 have been canceled.

Appellants appeal the rejection of claims 1, 2, and 5. A copy of all of the claims involved in the appeal is attached hereto in the Appendix.

**4. STATUS OF AMENDMENTS**

There are currently no amendments pending.

**5. SUMMARY OF THE CLAIMED SUBJECT MATTER**

Generally, the pending claims are directed to devices and methods for controlling the speed of a motor vehicle in terms of either a constant distance control, or a constant speed control. (See, e.g., page 1, lines 2 to 9 of Appellants' specification). Independent claim 1 recites a device (1) for controlling the speed of a motor vehicle, including an arrangement (5) for allowing a distance to a preceding vehicle to be set by a driver of the vehicle in the form of a time gap (see, e.g., page 3, lines 21 to 23 and Figure 1 of Appellants' specification); an arrangement (7) for changing longitudinal dynamics of the speed control when the time gap

changes (see, e.g., page 4, lines 2 to 7 and Figure 1 of Appellants' specification); an arrangement (7, 12, 14) for increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap (see, e.g., page 4, lines 7 to 11 and Figure 1 of Appellants' specification); and an arrangement (7) for first activating, given the decrease in the time gap, deceleration devices (14) of the vehicle at a shorter distance from the preceding vehicle (see, e.g., page 4, lines 11 to 15 and Figure 1 of Appellants' specification).

Independent claim 5 recites a method for controlling the speed of a motor vehicle, including setting (5) a distance to a preceding vehicle by a driver of the vehicle in the form of a time gap (see, e.g., page 3, lines 21 to 23 and Figure 1 of Appellants' specification); changing longitudinal dynamics (7) of the speed control when the time gap changes (see, e.g., page 4, lines 2 to 7 and Figure 1 of Appellants' specification); increasing (7, 12, 14), given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap (see, e.g., page 4, lines 7 to 11 and Figure 1 of Appellants' specification); and first activating (7), given the decrease in the time gap, deceleration devices (14) of the vehicle at a shorter distance from the preceding vehicle (see, e.g., page 4, lines 11 to 15 and Figure 1 of Appellants' specification).

## **6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 1, 2, and 5 are currently pending and stand finally rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,434,471 to Asada et al. (hereinafter Asada et al.).

## **7. ARGUMENTS**

Claims 1, 2, and 5 stand rejected under 35 U.S.C. § 102(b) as anticipated by Asada et al. It is respectfully submitted that Asada et al. do not anticipate any of the present claims as explained below.

To anticipate a claim, each and every element as set forth in the claim must be found in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To the extent the Examiner may be relying on the doctrine of inherent disclosure in support of the anticipation rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

**A. Claims 1 and 2 are not anticipated by Asada et al.**

Claim 1 of the present application recites:

A device for controlling a speed of a motor vehicle in terms of one of (a) a constant distance control in the case that at least one preceding vehicle is detected by a radar sensor and (b) a constant speed control in the case that no preceding vehicle is detected by a radar sensor, the device comprising:

an arrangement for allowing a distance to a preceding vehicle to be set by a driver of the vehicle in the form of a time gap;

an arrangement for changing longitudinal dynamics of the speed control when the time gap changes;

an arrangement for **increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system** so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap; and

an arrangement for **first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle.**

As regards the feature of *increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system*, the Examiner relies on column 5, line 40 to column

6, line 4 of Asada et al. However, this section of Asada et al. does not identically disclose, or even suggest, increasing a maximum possible vehicle acceleration or a maximum possible vehicle deceleration implementable by a speed control system. Instead, Asada et al. explicitly states that “the vehicle speed control section 23 limits the acceleration to a predetermined maximum acceleration  $\alpha_{max}$  which, in this example, is equal to 0.06 G” and nowhere does Asada et al. indicate changing this predetermined maximum value. (Asada et al., col. 5, lines 57 to 59 (emphasis added)). Moreover, Asada et al. repeatedly states this predetermined maximum acceleration value of 0.06 G throughout its description. (See e.g. Asada et al., col. 6, lines 20 to 21; and col. 8, lines 17 to 19, and 45 to 46). Thus, the maximum acceleration of Asada et al. is predetermined, and is not increased, given a decrease in the time gap.

The Advisory Action and the Final Office Action at page 4 assert that column 5, lines 53 to 57 of Asada et al. “teaches increasing a maximum possible acceleration given a decrease in the time gap.” However, in the context of the example of Asada et al. described in column 5, lines 38 to 64, the cited section merely refers to the time rate of change of the desired time gap, i.e., the cited section merely indicates how quickly the actual time gap is increased/decreased upon setting a desired time gap, in order to match the actual time gap to the desired time gap. However, nowhere does this cited section refer to increasing a maximum possible vehicle acceleration or a maximum possible vehicle deceleration. In this regard, as more fully set forth above, Asada et al. explicitly and repeatedly indicates a predetermined maximum acceleration of 0.06 G that limits acceleration regardless of the actual or desired time gap, and no change to this predetermined maximum is contemplated by Asada et al.

Further, Asada et al. specifically teaches away from increasing a maximum possible vehicle acceleration or a maximum possible vehicle deceleration because it seeks to prevent “unwanted and uncomfortable acceleration or deceleration.” (Asada et al., col. 1, lines 19 to 20).

As regards the feature of *first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle*, the Examiner also relies on column 5, line 40 to column 6, line 4 of Asada et al. However, this section of Asada et al. does not identically disclose, or even suggest, first activating, given the decrease in the time gap, deceleration devices at a shorter distance from the preceding

vehicle. Nowhere does Asada et al. even refer to first activating deceleration devices at a shorter distance from the preceding vehicle. Instead, Asada et al. merely indicates “decelerat[ing] the vehicle gradually and increas[ing] the vehicle spacing gradually.” (Asada et al., col. 6, lines 3 to 4 (emphasis added)).

The Advisory Action and the Final Office Action at page 4 assert that column 5, lines 53 to 57 of Asada et al. “teaches … activating deceleration devices of the vehicle at a shorter distance from the preceding vehicle.” However, as more fully set forth above, the cited section merely indicates how quickly the actual time gap is increased/decreased upon setting a desired time gap, in order to match the actual time gap to the desired time gap. However, nowhere does this cited section refer to first activating deceleration devices at a shorter distance. In this regard, as more fully set forth above, Asada et al. plainly indicates gradually increasing/decreasing vehicle spacing.

Further, as more fully set forth above, Asada et al. also teaches away from first activating deceleration devices at a shorter distance from the preceding vehicle because it seeks to prevent “unwanted and uncomfortable acceleration or deceleration.” (Asada et al., col. 1, lines 19 to 20).

Accordingly, Asada et al. do not identically disclose, or suggest, the features of claim 1, so that Asada et al. do not anticipate claim 1.

Claim 2 depends from independent claim 1, and thus is allowable for at least the same reasons that claim 1 is allowable.

**B. Claim 5 is not anticipated by Asada et al.**

Claim 5 of the present application recites:

A method for controlling a speed of a motor vehicle in terms of one of (a) a constant distance control in the case that at least one preceding vehicle is detected by a radar sensor and (b) a constant speed control in the case that no preceding vehicle is detected by a radar sensor, the method comprising:

setting a distance to a preceding vehicle by a driver of the vehicle in the form of a time gap;

changing longitudinal dynamics of the speed control when the time gap changes;

**increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system** so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap; and

**first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle.**

As discussed above, Asada et al. does not identically disclose, or suggest, the features of increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap, and first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle, as provided for in the context of claim 5.

In the Advisory Action and the Final Office Action, the Examiner again alleged that these features of the present application are described at column 5, line 40 to column 6, line 4 of Asada et al. As more fully set forth above, Asada et al. does not identically disclose, or suggest, these features of the present application.

Accordingly, Asada et al. does not identically disclose, or suggest, the features of claim 5, so that Asada et al. does not anticipate claim 5.

## **8. CLAIMS APPENDIX**

An appendix containing the claims involved in the appeal is attached hereto.

## **9. EVIDENCE APPENDIX**

No evidence has been submitted pursuant to 37 C.F.R. §§ 1.130, 1.131 or 1.132. No other evidence has been entered by the Examiner or relied upon by Appellants in the appeal. An “Evidence Appendix” is nevertheless attached hereto.

## **10. RELATED PROCEEDINGS APPENDIX**

There are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellants or the assignee, Robert Bosch GmbH, “which may be related to, directly affect or be directly affected by or have a bearing on the Board’s decision in the pending appeal.” As such, there are no “decisions rendered by a court or the Board in any proceeding identified pursuant to [37 C.F.R. § 41.37(c)(1)(ii)]” to be submitted. A “Related Proceedings Appendix” is nevertheless attached hereto.

**11. CONCLUSION**

For at least the reasons indicated above, Appellants respectfully submit that the art of record does not teach or suggest Appellants' invention as recited in the claims of the above-identified application. Accordingly, it is respectfully submitted that the invention recited in the claims of the present application is new, non-obvious and useful. Reversal of the Examiner's rejections of the claims is therefore respectfully requested.

Respectfully submitted,

Dated: June 30, 2009

By: /Michelle M. Carniaux/  
Michelle M. Carniaux, Reg. No. 36,098 for  
Gerard A. Messina (Reg. No. 35,952)

KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
(212) 425-7200  
**CUSTOMER NO. 26646**

**CLAIMS APPENDIX**

1. A device for controlling a speed of a motor vehicle in terms of one of (a) a constant distance control in the case that at least one preceding vehicle is detected by a radar sensor and (b) a constant speed control in the case that no preceding vehicle is detected by a radar sensor, the device comprising:

an arrangement for allowing a distance to a preceding vehicle to be set by a driver of the vehicle in the form of a time gap;

an arrangement for changing longitudinal dynamics of the speed control when the time gap changes;

an arrangement for increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap; and

an arrangement for first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle.

2. The device according to claim 1, wherein a change in the time gap allows different driving programs to be selected.

5. A method for controlling a speed of a motor vehicle in terms of one of (a) a constant distance control in the case that at least one preceding vehicle is detected by a radar sensor and (b) a constant speed control in the case that no preceding vehicle is detected by a radar sensor, the method comprising:

setting a distance to a preceding vehicle by a driver of the vehicle in the form of a time gap;

changing longitudinal dynamics of the speed control when the time gap changes;

increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap; and

first activating, given the decrease in the time gap, deceleration devices of the vehicle

at a shorter distance from the preceding vehicle.

**EVIDENCE APPENDIX**

No evidence has been submitted pursuant to 37 C.F.R. §§1.130, 1.131, or 1.132. No other evidence has been entered by the Examiner or relied upon by Appellants in the appeal.

**RELATED PROCEEDINGS APPENDIX**

As indicated above in this Appeal Brief, there are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellants or the assignee, Robert Bosch GmbH, “which may be related to, directly affect or be directly affected by or have a bearing on the Board’s decision in the pending appeal.” As such, there are no “decisions rendered by a court or the Board in any proceeding identified pursuant to [37 C.F.R. § 41.37(c)(1)(ii)]” to be submitted.